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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,923	12/21/2001	Brian Gaither Bates	AM100369	9899
25291	7590	11/04/2003	EXAMINER	
WYETH PATENT LAW GROUP FIVE GIRALDA FARMS MADISON, NJ 07940			TURNER, SHARON L	
			ART UNIT	PAPER NUMBER
			1647	

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,923

Applicant(s)

BATES ET AL.

Examiner

Sharon L. Turner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-58 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Election/Restriction

1. Claims 1-58 are pending.

Improper Markush

2. Prior to setting forth the restriction requirement, it is pointed out that applicants have presented instant claims in improper Markush format, see *Ex parte Markush*, 1925 C.D. 126, *In re Weber*, 198 USPQ 334 and MPEP 803.02 and 806.04. The claims are improperly set forth as the genus claims encompass multiple products, as identified and claimed, and fail to share the characteristics of a genus, i.e., a common utility and a substantial structural feature essential to the disclosed utility. Alternatively, the claims define multiple structurally distinct compounds capable of different use, with different modes of operation, different function and different effects. A reference against one of the claimed components or methods would not be a reference against the other. Therefore, the restriction will be set forth for each of the various groups, irrespective of the improper format of the claims, because the claims define inventions that are not proper species.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, and 36 drawn to an isolated nucleic acid, classified for example in class 536, subclass 23.1.
- II. Claims 20-34, drawn to a polypeptide, classified for example in class 530, subclass 350.
- III. Claim 35, drawn to an antibody, classified for example in class 530, subclass 387.1.
- IV. Claim 37-38 drawn to a method for detecting a polypeptide, classified for example in class 436, subclass 500.
- V. Claim 39 drawn to a kit comprising a compound that selectively binds classified for

example in class 530, subclass 300.

- VI. Claims 40-41 drawn to a method of detecting a nucleic acid, classified for example in class 435, subclass 6.
 - VII. Claim 42, drawn to a kit for hybridizing, classified for example in class 536, subclass 23.1.
 - VIII. Claim 43, drawn to a method for identifying a compound that modulates, classified for example in class 435, subclass 7.1.
 - IX. Claim 44, and 55 drawn to a method for modulating activity of mGluR, classified for example in class 435, subclass 5.
 - X. Claim 45-47, and 56 drawn to a method for modulating neuronal cell signalling, classified for example in class 800, subclass 4.
 - XI. Claims 48-54, and 57-58 drawn to a method for treating a subject, classified for example in class 514 subclass 2.
4. The inventions are distinct, each from the other because of the following reasons:
5. Inventions I-III, V and VII are related as products. The products are distinct each from the other as the products are comprised of divergent structure, exhibit different effects and function; for example nucleic acids, peptides, compounds and antibodies.
6. Inventions IV, VI, and VIII-XI are related as processes. The processes are distinct each from the other as the processes differ in reagents, steps, functions and effects.
7. Inventions I-III, V, VII and IV, VI, VIII-XI are related as products and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the processes for using the products as claimed can be practiced with another materially different

product or (2) the products as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the processes for using the different nucleic acids, peptides, compounds and antibodies can be practiced with alternative nucleic acids, peptides, compounds and antibodies and the products as claimed can be used alternatively in a method of treatment, a method of inhibiting assembly, a method of making, a method of modulating cellular response, a method of screening compounds, and a method for detecting compositions.

8. The inventions are distinct, each from the other because of the following reasons:

9. Restriction is deemed to be proper because the products indicated constitute patentably distinct inventions for the following reasons. Each of the polynucleotides, polypeptides, compounds and antibodies have a unique structural feature that requires a unique search of the prior art. The inventions indicated differ in structure and function as they are composed of divergent nucleic and amino acids and are differentially able to hybridize, bind or mediate biological functions. A reference to one element would not constitute a reference to another. In addition, searching all of the molecules in a single patent application would provide an undue search burden on the examiner and the USPTO's resources because the indicated searches are not co-extensive.

10. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

11. Because these inventions are distinct for the reasons given above and the search required for any Group is not required for any other Group, restriction for examination purposes as

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indicated is proper.

12. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

13. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

14. This application contains claims directed to the following patentably distinct species of the claimed invention:

Neurological and Psychiatric Disorders selected from: A) schizophrenia, B) schizoaffective disorder, C) bipolar affective disorder, D) unipolar affective disorder, and E) adolescent conduct disorder. .

Modulators selected from: A) mGluR5M nucleic acid, B) mGluR5M antibody, C) active antibody fragment, C) ribozyme, D) antisense nucleic acid, E) small molecules modulator, F) peptide and G) peptidomimetic.

If applicant elects one of Groups IX-XI, applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 44, 45, 48 and 49 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that

all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

15. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

16. Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

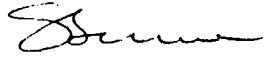
Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Turner, Ph.D. whose telephone number is (703) 308-0056. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary

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Kunz, can be reached at (703) 308-4623.

A handwritten signature in cursive script, appearing to read "Sharon L. Turner".

Sharon L. Turner, Ph.D.
October 31, 2003